

Supreme Court of the United States.

OCTOBER TERM, 1945.

JOHN D. LYON,
Petitioner,

v.

JEROME K. HARKNESS,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

Opinions Below.

The opinion of the District Court for the District of New Hampshire relating to the issue presented by this petition is to be found in the record, at pages 53 to 55.

The opinion of the Circuit Court of Appeals for the First Circuit affirming the judgment of the District Court is to be found in the record, at pages 97 to 100.

Jurisdiction.

The judgment of the Circuit Court of Appeals for the First Circuit affirming the District Court's decision was entered on November 5, 1945 (record, page 100).

The jurisdiction of this Court is invoked under section 240(a) of the Judicial Code as amended, United States Code, title 28, section 347(a).

Statement of Facts.

The facts have been stated in the foregoing petition.

Specification of Errors.

It is submitted that the Circuit Court of Appeals erred—

1. In ruling that the law of the United States or the rules of court removed from the jurisdiction of the District Courts of the United States petitions for writ of habeas corpus in cases in which the petitioner was not held under state court process until all available remedies have been exhausted.

2. In affirming the judgment of the District Court.

3. In denying the petitioner's prayer for writ of habeas corpus.

Argument.

The Circuit Court of Appeals erred in ruling that the law of the United States or the rules of court removed from the jurisdiction of the District Courts of the United States petitions for writ of habeas corpus in cases in which the petitioner was not held under state court process until all available remedies have been exhausted.

First: Upon this question the United States Code has given to the judges and justices of the District Courts, the Circuit Court of Appeals and the Supreme Court jurisdiction of the issuance of writs of habeas corpus (28 U.S.C. sections 451, 452).

The Supreme Court of the United States in the case of *Roberts v. Reilly*, 116 U.S. 80, holds that a fugitive is entitled by writ of habeas corpus to demand the judgment of the United States courts on the lawfulness of his arrest and imprisonment. (See also *Robb v. Connolly*, 111 U.S. 624.)

The petitioner is not held under state court authority, but is held under the authority of the United States (*Lascelles v. Georgia*, 148 U.S. 537, 541).

No state has the authority to make treaties with another state (*Rhode Island v. Massachusetts*, 12 Pet. 657, 724; see also article 1, section 10, of the Constitution of the United States).

Second: The Circuit Court of Appeals erred in affirming the judgment of the District Court.

A. The petitioner is not charged with a crime cognizable under the laws of Massachusetts.

“So long as such a decree is in effect a father does not have the right to custody of his child and is not under the obligation to provide for his support other than to make the payments for his support ordered by the decree” (*Barry v. Sparks*, 306 Mass. 80, 83).

This obligation the superior courts (courts of criminal jurisdiction) are not authorized to enforce (*Lyon v. Lyon*, 1945 Mass. Adv. Sh. 1087; 63 N.E. (2d) 459, 460).

As stated in the “Report on Criminal Remedies in Massachusetts for Failure to Furnish Support,” by the Association of Justices, at page 16: “Under the Massachusetts rule, the taking of custody from the father appears to terminate the common law obligation, and the only obligation remaining upon him is that which may arise from

the decree of the court awarding the custody. *Ryder v. Perkins*, 219 Mass. 525. That obligation the criminal courts are not authorized to enforce. In order to preserve the criminal remedy, the wife, in divorce or separate support proceedings, will often do well to avoid taking a decree for custody. *Gilley v. Gilley*, 79 Me. 292. *Glynn v. Glynn*, 94 Me. 465."

B. The petitioner is not a fugitive from justice, not having been present in Massachusetts at the time of the commission of the crime or thereafter, and not having left Massachusetts subsequently to the commission of the crime (see United States Constitution, article 4, par. 2; *Ex parte Montgomery*, 244 Fed. 967; *Hyatt v. The People of the State of New York*, 188 U.S. 691; *Innes v. Tobin*, 240 U.S. 127).

C. The District Court of the United States protects the petitioner from rendition if he is charged with acts which do not constitute crimes under the laws of Massachusetts (*Hard v. Splaine*, 45 D.C. Apps. 1).

D. The Governor of New Hampshire and the judge of the District Court for the District of New Hampshire are obliged to recognize the divorce judgment issued from the court of the State of Nevada referred to in the petition (see United States Constitution, article IV, section 1, which obliges state and federal authorities to give full faith and credit to the just determinations of courts of the United States). This provision of the Constitution of the United States is supported by the case of *Esenwein v. Commonwealth, ex rel. Esenwine*, 325 U.S. 279, in the absence of evidence tending to impeach the judgment. Further, neither the Governor of New Hampshire nor the judge of the District Court of the United States for the District of New Hampshire had any authority to, and in fact neither

did, receive evidence impeaching said judgment issuing from the state courts of Nevada, and therefore the divorce between John D. Lyon and Marjorie M. Lyon must be recognized and accepted by both the Governor of New Hampshire and the judge of the District Court of the United States for the District of New Hampshire, and therefore there could not be a crime committed by John D. Lyon of failure to support Marjorie M. Lyon, a woman alleged to be his wife but by virtue of the law no longer his wife, and therefore John D. Lyon could not be extradited from the State of New Hampshire to the Commonwealth of Massachusetts because of any failure on his part to support Marjorie M. Lyon or his children, Stephanie B. Lyon and John D. Lyon II.

Conclusion.

For the reasons above given and especially for the following:

First, that during the pendency of divorce proceedings and thereafter a man has no obligation of support of his wife and children under the laws of Massachusetts except to comply with the orders of the divorce court in Massachusetts, either the Probate Court, a civil court, or the Superior Court in civil sessions. He has no obligations under the criminal law to support his wife and children during the pendency of divorce proceedings, and the Governor of New Hampshire and the Federal courts must recognize the proceedings pending in the Probate Court of Massachusetts, a civil court (record, pages 44 to 47, inclusive). Further, if he could commit such a crime, he did not commit it, for the reason that Marjorie M. Lyon was not his wife and the children were provided for by the judgment of the District Court of the State of Nevada, compliance with the provisions of said judgment not having

been denied by return to the petition for habeas corpus, and full recognition of said divorce must be given under the provisions of the United States law and the further law that the Governor of the demanded state and the judge of the Federal District Court cannot receive evidence and make any determinations concerning the validity of said judgment, but must give full faith and credit to this judgment on habeas corpus proceedings. Further, the petitioner was not a fugitive from justice according to his petition, which was not denied by the return to the writ, and if it were to have been denied by the return to the writ he was entitled to trial on the merits of his position in respect to the question of whether he was a fugitive from justice or not. This trial he was denied by the action of the District Court dismissing the writ upon motion of the respondent solely on arguments. In conclusion, the petitioner maintains that he has a full right to a judgment on the merits of his petition from a court of competent jurisdiction of the United States and is not obliged to submit himself to the jurisdiction of the state courts of the State of New Hampshire.

It is respectfully submitted that the writ of certiorari should be granted.

Respectfully submitted,

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